IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JERRY RODRIGUEZ, SR. and IDAHAILI RODRIGUEZ, husband and wife,	:	C.A. No. 04C-03-028 WLW
Plaintiffs,	:	
v.	:	
FARM FAMILY CASUALTY INSURANCE COMPANY, a foreign corporation;	:	
Defendants.	:	

Submitted: March 24, 2006
Decided: April 3, 2006

ORDER

Upon Application for Certification of
Interlocutory Appeal. Denied.

Scott E. Chambers, Esquire of Schmittinger and Rodriguez, P.A., Dover, Delaware; attorneys for the Plaintiffs.

David C. Malatesta, Jr., Esquire of Kent & McBride, P.C., Wilmington, Delaware; attorneys for Defendant Farm Family Casualty Insurance Company.

WITHAM, R. J.

Upon review of the Application of Farm Family Casualty Insurance Company ("Defendant") for Certification of an Interlocutory Appeal of the Superior Court's April 19, 2005, January 26, 2006 and March 6, 2006 Orders ("Orders"), as well as the response of Jerry and Idahaili Rodriguez ("Plaintiffs") thereto, it appears to the Court that:

Background

1. This interlocutory application arises out of an Order granting Gina Bell ("Bell") and Ron Jackson's ("Jackson") Motion to Dismiss, an Order denying Defendant's Motion for Summary Judgment and an Order denying Defendant's Motion for Reconsideration/Reargument.

2. This action stemmed from a motor vehicle accident, in which Bell was allegedly driving Sherri Williams' ("Williams") van and rear-ended a car, causing that car to rear-end Plaintiffs. Bell did stop at the scene of the accident, but left before the police arrived and without providing any information. As she was driving away, Plaintiffs were able to observe a partial license plate number. Based on that number, Plaintiffs believed that Carl Jenkins ("Jenkins") was the owner of the vehicle and Williams was the operator.

3. In August of 2004, more than two years after the accident, Plaintiffs learned that Williams was the owner, but had given the van to Jackson so that he could repair the vehicle. He then allegedly permitted Bell to drive the van. Based on that information, Williams was dismissed from the case.

4. In an Order dated April 19, 2005, this Court granted Bell and Jackson's Motion

to Dismiss because the statute of limitations had expired.

5. Defendant filed a Motion for Summary Judgment, contending that the vehicle was not a "hit-and-run" vehicle pursuant to 18 *Del. C.* §3902(a)(3)c. However, in an Order dated January 26, 2006, this Court decided that the vehicle did qualify as a "hit-and-run" vehicle under Section 3902. Additionally, this Court denied Defendant's Motion for Reconsideration/Reargument on March 6, 2006.

Interlocutory Certification

6. The question of appealability of an interlocutory order is primarily determined by the opinion of the trial court.[1]

7. Defendant makes three arguments for certification. Supreme Court Rule 42(b) states, "No interlocutory appeal will be certified by the trial court or accepted by this Court unless the order of the trial court determines a substantial issue, [or] establishes a legal right . . . ."[2] Defendant asserts that the Orders determine a substantial issue and establish a legal right. While Defendant does not expound upon that statement, this Court agrees that the Orders determine a substantial issue because if this Court had granted Defendant's motion for summary judgment, it would have been case dispositive.

8. The next argument is under Supreme Court Rule 42(b)(i), which says that an

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[1] *Wilmington Med. Ctr., Inc., v. Coleman*, 298 A.2d 320 (Del. 1972).

[2] The five criteria mentioned in Supreme Court Rule 42(b) are: (i) same as certified question; (ii) controverted jurisdiction; (iii) substantial issue; (iv) prior judgment opened; and (v) case dispositive issue. Only subsections (i) and (v) are applicable for the purpose of this Application; thus, only subsections (i) and (v) will be addressed.

interlocutory appeal will be certified if it meets the requirements set out in Supreme Court Rule 41 pertaining to certifying questions of law. Supreme Court Rule 41 requires that the question be either one of first instance, subject to conflicting decisions by trial courts, or relate to the constitutionality, construction or application of a statute which should be settled by the Court. Defendant contends that this appeal should be certified because the Supreme Court has not yet addressed the construction and application of 18 *Del. C.* §3902(a)(3)c.

9. However, the Supreme Court has interpreted Section 3902.[3] In *Abramowicz*, the Supreme Court clearly stated that the purpose of uninsured motorist legislation is to protect innocent, injured persons who would be unable to obtain recompense from negligent tortfeasors.[4] The Superior Court held in this case that *Nacchia* is inapposite because Plaintiffs did not act intentionally to prevent themselves from being "legally entitled to recover."

10. Defendant's third argument is that pursuant to Supreme Court Rule 42(b)(v), a review of the interlocutory order may terminate the litigation or may otherwise serve considerations of justice. As mentioned above, granting Defendant's motion for summary judgment would terminate the litigation. However, this Court believes it correctly determined that Plaintiffs are entitled to seek uninsured motorist coverage

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[3] *See Nationwide Mut. Ins. Co. v. Nacchia*, 628 A.2d 48 (Del. 1993) (interpreting the phrase "legally entitled to recover"); *State Farm Mut. Auto. Ins. Co. v. Abramowicz*, 386 A.2d 670 (holding that physical contact requirement of an insurance policy was more restrictive than Section 3920 and, therefore, was void as against public policy).

[4] *Abramowicz*, 386 A.2d at 672.

from Defendant for the following reasons: (1) Plaintiffs did nothing improper to terminate the "legally entitled to recover" requirement under *Nacchia*; (2) the owner of the vehicle was never an uninsured motorist because she was not in a master-servant or principal-agent relationship with Bell; and the van was a "hit-and-run" vehicle because the driver fled the scene without providing her identity or any information about the owner, and the owner and operator were not definitively identified until after the expiration of the statute of limitations. Additionally, it is clearly the policy of this State to "protect the insured injured by unknown tortfeasors."[5]

Wherefore, the Court does not find that the standards for an interlocutory application have been met. Defendant's Application for Certification of an Interlocutory Appeal of the Superior Court's April 19, 2005, January 26, 2006 and March 6, 2006 Orders is ***DENIED.***

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution

[5]*Leffler v. Allstate Ins. Co.*, 1998 Del. Super. LEXIS 299, at *12-13.